

only be granted when the defendants consent to judgment, that is, a final judgment, in the event of their failing in the test action.

The appeal will be dismissed. Costs to the plaintiff in any event.

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HON. MR. JUSTICE MIDDLETON.

MAY 3RD, 1912.

PEARSON v. ADAMS.

3 O. W. N. 1205.

*Covenant — Building Restrictions — Construction of — Erection of Apartment House — Judicature Act, s. 81 — Authority of Previous Decision.*

Motion for injunction restraining defendants from erecting an apartment house upon certain lands on Maynard Place, Toronto, in alleged breach of covenant that lands "are to be used as a site for a detached brick or stone dwelling-house. Motion by consent turned into motion for judgment.

MIDDLETON, J., dismissed action with costs.

*Robertson v. Defoe*, 20 O. W. R. 712, followed with reluctance.

Motion by plaintiff for an injunction restraining defendant from erecting an apartment house upon certain lands on Maynard place, in alleged breach of the provisions of a conveyance of 18th April, 1888, which stipulated that the lands were "to be used only as a site for a detached brick or stone dwelling-house."

By consent of counsel this motion was turned into a motion for judgment.

J. H. Cooke, for the plaintiff.

J. M. Godfrey, for the defendant.

HON. MR. JUSTICE MIDDLETON:—Apart from authority, binding upon me, I would have thought that an apartment house such as the defendant contemplates erecting could not be described as "a detached dwelling-house." I would have thought it clear that the building was, in truth, a series of separate dwellings, attached, and separated by the one main perpendicular wall and the two horizontal partitions. But this, as I understand the case of *Robertson v. Defoe*, 20 O. W. R. 712; 25 O. L. R. 286; 3 O. W. N. 431; is not the law here; and yielding to the authority of that case, there is no alternative save to dismiss the action with costs. I